

Department of Justice

§ 16.73

thereby cause damage to the national security.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), (k)(2) and (k)(5) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. In addition, release of these records may reveal information that is properly classified pursuant to Executive Order 12356, and thereby cause damage to the national security. Amendment of the records in this system would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede any investigative process, whether civil or criminal, if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and may therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this

subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsection (g) because this system of records is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), (k)(2) and (k)(5) of the Privacy Act.

[Order No. 57-91, 56 FR 58305, Nov. 19, 1991]

§ 16.73 Exemption of Office of Legal Policy System—limited access.

(a) The following system of records is exempt from 5 U.S.C 552a (d)(1), (2), (3) and (4); (e)(1) and (2), (e)(4)(G) and (H), (e)(5); and (g):

(1) Freedom of Information and Privacy Appeals Index (JUSTICE/OLP-001).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsections (d)(1), (2), (3), and (4) to the extent that information in this record system relates to official Federal investigations and matters of law enforcement. Individual access to these records might compromise ongoing investigations, reveal confidential informants or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(2) From subsections (e)(1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure

the relevance, accuracy, timeliness, and completeness of all information obtained.

(3) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(4) From subsections (e)(4)(G) and (H) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(5) From subsection (g) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(c) The following system of records is exempt from 5 U.S.C. 552a(d)(1) and (e)(1):

(1) U.S. Judges Records System (JUSTICE/OLP-002).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contracted who, without an assurance of anonymity, refuse to provide information concerning a candidate for a judgeship. Access could reveal the identity of the source of the information and constitute a breach of the promised confidentiality on the part of the Department. Such breaches ultimately would restrict the free flow of information vital to the determination of a candidate's qualifications and suitability.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluative purposes, it is impossible to determine advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may seem irrelevant, when combined with other seemingly irrelevant

information, can on occasion provide a composite picture of a candidate which assists in determining whether that candidate should be nominated for appointment.

(e) The following system of records is exempt from U.S.C. 552a(c) (3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H) (e)(5); and (g):

(1) General Files System of the Office of Legal Policy (JUSTICE/OLP-003).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is

appropriate to retain all information since it may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigation process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsections (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations and duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(8) From subsection (g) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(g) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g):

(1) Declassification Review System (JUSTICE/OLP-004).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552(j)(2), (k)(1), (k)(2), and (k)(5).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department of Justice as well as the recipient agency. This would permit record subjects to impede the investigation e.g., destroy evidence, intimidate potential witnesses, or flee

the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) to the extent that information in this record system relates to official Federal investigations and matters of law enforcement and/or is properly classified pursuant to E.O. 12356. Individual access to these records might compromise ongoing investigations, reveal confidential sources or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation, or jeopardize national security or foreign policy interests. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information which may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this

§ 16.74

28 CFR Ch. I (7–1–14 Edition)

subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H), and (g) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[Order No. 34–85, 51 FR 754, Jan. 8, 1986. Redesignated by Order No. 6–86, 51 FR 15476, Apr. 24, 1986 and further redesignated and amended by Order No. 19–86, 51 FR 39373, Oct. 28, 1986]

§ 16.74 Exemption of National Security Division Systems—limited access.

(a) The following system of records is exempted from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (4)(G),(H) and (I), (5) and (8); (f); (g); and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (2) and (5): Foreign Intelligence and Counterintelligence Records System (JUSTICE/NSD–001). These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (2), and (5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) *Subsection (c)(3)*. To provide the target of a surveillance or collection activity with the disclosure accounting records concerning him or her would hinder authorized United States intelligence activities by informing that individual of the existence, nature, or scope of information that is properly classified pursuant to Executive Order 12958, as amended, and thereby cause damage to the national security.

(2) *Subsection (c)(4)*. This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)(1)*. Disclosure of foreign intelligence and counterintelligence information would interfere with collection activities, reveal the identity of confidential sources, and cause damage to the national security of the United States. To ensure unhampered and effective collection and analysis of foreign intelligence and counterintelligence information, disclosure must be precluded.

(4) *Subsection (d)(2)*. Amendment of the records would interfere with ongoing intelligence activities thereby causing damage to the national security.

(5) *Subsections (d)(3) and (4)*. These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1)*. It is often impossible to determine in advance if intelligence records contained in this system are relevant and necessary, but, in the interests of national security, it is necessary to retain this information to aid in establishing patterns of activity and provide intelligence leads.

(7) *Subsection (e)(2)*. Although this office does not conduct investigations, the collection efforts of agencies that supply information to this office would be thwarted if the agencies were required to collect information with the subject's knowledge.

(8) *Subsection (e)(3)*. To inform individuals as required by this subsection could reveal the existence of collection activity and compromise national security. For example, a target could, once made aware that collection activity exists, alter his or her manner of engaging in intelligence or terrorist activities in order to avoid detection.

(9) *Subsections (e)(4)(G), (H) and (I), and (f)*. These subsections are inapplicable to the extent that this system is exempt from the access provisions of subsection (d).

(10) *Subsection (e)(5)*. It is often impossible to determine in advance if intelligence records contained in this system are accurate, relevant, timely and complete, but, in the interests of national security, it is necessary to retain this information to aid in establishing patterns of activity and providing intelligence leads.

(11) *Subsection (e)(8)*. Serving notice could give persons sufficient warning to evade intelligence collection and anti-terrorism efforts.

(12) *Subsections (g) and (h)*. These subsections are inapplicable to the extent that this system is exempt from other specific subsections of the Privacy Act.

[Order No. 023–2007, 72 FR 44382, Aug. 8, 2007]